

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY AVERAGE WHOLESAL PRICE LITIGATION	) ) ) )	MDL NO. 1456 Civil Action No. 01-12257-PBS Subcategory Case No. 07-12141-PBS
THIS DOCUMENT RELATES TO:  <i>State of Iowa</i>  v.  <i>Abbott Laboratories, et al.</i>	) ) ) ) ) ) )	Judge Patti J. Saris Magistrate Judge Marianne B. Bowler

**PLAINTIFF’S EMERGENCY MOTION TO QUASH DEFENDANT PUREPAC  
PHARMACEUTICAL CO.’S CROSS-NOTICE OF CONTINUED VIDEOTAPED  
DEPOSITION OF LYNN DONOVAN**

Plaintiff, the State of Iowa, by and through its attorneys of record, files this Emergency Motion to Quash Defendant Purepac Pharmaceutical Co.’s (hereinafter referred to as “Purepac”) Cross-Notice of the Second Amended Notice of Taking Continued Videotaped Deposition of Lynn Donovan.

**BACKGROUND**

On or about July 2, 2009, Purepac served a second amended cross-notice for the continued videotaped deposition of Lynn Donovan. (Exhibit “A” hereto). Ms. Donovan is an employee of the Hawaii Medicaid program and her deposition initially was noticed in the case styled as State of Hawaii v. Abbott Laboratories, et al., Civil No. 06-1-0720-04 EEH, which has been consolidated for discovery purposes with State of Hawaii v. Schering Corporation, et al., Civil No. 07-1-1639-09 EEH. Both cases are pending in the First Circuit Court, State of Hawaii. Ms. Donovan has never been employed by the State of Iowa.

Ms. Donovan's continued deposition is set for 9:00 a.m. Hawaii time (which is 2:00 p.m. Central) on Monday, July 20, 2009, in Honolulu, Hawaii.

#### ARGUMENT

Plaintiff objects to Purepac's cross-notice for multiple reasons. First, it was not timely served. The continuation of Ms. Donovan's deposition in the Hawaii matter was noticed on May 28, 2009. *See* Exhibit A to Exhibit "B" attached hereto. On June 2, 2009, Purepac served its cross-notice to plaintiff. (Exhibit B hereto). On June 23, 2009, Purepac served a notice of cancellation of the deposition. (Exhibit "C" hereto). Purepac did not notify plaintiff of the continuation of Ms. Donovan's deposition scheduled for July 20, 2009 until July 2, 2009. *See* Exhibit A hereto. Eighteen (18) days notice of a deposition that was understood to be cancelled is entirely unreasonable and contrary to Fed. R. Civ. P. 30(b)(6)(1)<sup>1</sup>. This is particularly unreasonable given that the deposition will be taken in Hawaii.

Second, the foregoing applies *a fortiori* given that there is no reason whatsoever to believe that the deposition testimony of this witness, who has never worked for Iowa Medicaid will be admissible in this case, or that such testimony will lead to the discovery of admissible evidence. Attached as Exhibit D is plaintiff's counsel's correspondence with counsel for Purepac regarding the Donovan deposition. The response of Purepac's counsel strongly suggests, if not confirms, that this deposition constitutes nothing more than a fishing expedition for inadmissible hearsay.

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<sup>1</sup> Federal Rule 30(b)(6)(1) requires that "[a] party who wants to depose a person by oral questions must give reasonable written notice to every other party." Eighteen (18) days notice to counsel for the State of Iowa for a deposition in Hawaii is indisputably unreasonable, particularly where the witness has no connection whatsoever to the instant case.

CONCLUSION

For all the foregoing reasons, plaintiff respectfully requests that its Motion to Quash be granted and that the Court sign the attached proposed order. (Exhibit “E” hereto).

Dated: July 15, 2009

Respectfully submitted,

**KIRBY McINERNEY, LLP**  
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By: /s/ Joanne M. Cicala  
Joanne M. Cicala  
James P. Carroll, Jr.  
Jocelyn R. Normand  
Kathryn B. Allen  
*Counsel for the State of Iowa*

**Certification Pursuant to Local Rule 7.1**

The undersigned counsel certifies pursuant to Local Rule 7.1(a)(2) that she conferred with counsel for Purepac on the issues raised in this motion and has not been able to reach agreement.

Dated: July 15, 2009

/s/ Jocelyn R. Normand  
Jocelyn R. Normand

**CERTIFICATE OF SERVICE**

I, Kathryn B. Allen, hereby certify that I caused a true and correct copy of the foregoing Emergency Motion to Quash Defendant Purepac Pharmaceutical Co.'s Cross-Notice of the Continued Videotaped Deposition of Lynn Donovan to be served on counsel of record via electronic service pursuant to paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File and Serve for posting and notification to all parties.

Dated: July 15, 2009

/s/  
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